



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.08.2019

CORAM :

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

C.R.P. (PD) (MD)No.847 of 2014

and

M.P(MD)No.1 of 2014

1.G.K.Srinivasan

2.G.K.Rajeseakaran

... Petitioners

vs.

1. L.Kamala

2. J.Mala

3.G.K.Selvaraj

... Respondents

PRAYER: Petition filed under Section 115 of the Code of Civil Procedure, against the fair and decreetal order dated 07.02.2014 made in I.A.No.85 of 2013 in un-filed C.M.A.No..... of 2014 on the file of the learned Principal District Judge, Thanjavur.

For Petitioners : Mr.D.Rajkumar

For R1 and R2 : Mr.M.Siddharthan

For R3 : No appearance

ORDER

This Civil Revision Petition arises out of the order dated 07.02.2014 in I.A.No.85 of 2013 in un-numbered C.M.A.. The said I.A. was filed by the respondents herein to condone the delay of 979 days in filing the Civil Miscellaneous Appeal.

2.The facts that are necessary for disposal of the Civil Revision Petition, are stated briefly herein:-

The respondents herein filed a suit for declaration in respect of immovable properties and for recovery of possession of the same. The said suit was returned on the ground that the Court does not have pecuniary jurisdiction and the respondents herein were directed to present the plaint before the appropriate Court within the specified time limit. In spite of doing so, the respondents herein chose to file the Civil Miscellaneous Appeal challenging the



said order with a delay of 979 days in filing the said appeal. In the application filed in support of the petition to condone the delay, it was stated that the second petitioner therein/ second respondent herein was taking care of the case on behalf of both the petitioners and that she suffers from diabetes, hypertension, severe arthritis and rheumatic pain and was taking treatment in Chennai for a long period. The said application was opposed by the petitioners herein on the basis that documentary evidence had not been provided to substantiate either the illness or the fact that she stayed at Chennai for treatment. The Lower Court considered the submissions of both parties and held that the second petitioner therein had produced sufficient documents to show that she was undergoing treatment for jaundice and other ailments in Chennai. On that basis the application to condone the delay was allowed.

3.At the hearing, the learned counsel for the revision petitioners submitted that this is a case of inordinate delay in filing the appeal. Therefore, he submitted that the respondents herein were required to provide a valid explanation for the delay along with supporting documents. In this regard, he further submitted that no explanation at all was offered as to why the first petitioner therein/first respondent herein could not prosecute the appeal. In other words, he submitted that the application to condone the delay was filed by the second respondent herein/second petitioner therein who is said to have suffered from illness, whereas no explanation at all was offered in respect of the first respondent herein/first petitioner therein. He also drew the attention of this Court to the counter and pointed out that the contention made by the second respondent that she suffered from illness was disputed by the revision petitioners and that the finding of the trial Court that the documents were not disputed was not correct. In support of his contentions, the learned counsel referred to and relied upon the decision of the Hon'ble Supreme Court in **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur, Nafar Academy and others** reported in **2013 (5) CTC 547**. In particular, he referred to paragraph No.15 of the judgment, wherein the principles relating to condonation of delay are set out. In specific, he referred to Clause VIII of paragraph 15 and submitted that in the cases of inordinate delay, a strict approach should be adopted. Accordingly, he submitted that the order of the trial Court is liable to be set aside.

4.On the contrary, the learned counsel for the respondents submitted that the delay had been explained with proper supporting documents as reflected in paragraph No.13 of the order of the trial Court. He further submitted that no prejudice would be caused because the suit is un-numbered, as on date, and the revision petitioners would be in a position to contest the Civil Miscellaneous Appeal on merits.



To

1.The Principal District Judge,
Thanjavur.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2)

+1 CC to Mr.D.RAJ KUMAR, Advocate SR-79836.

+1 CC to Mr.M.SIDDHARTHAN, Advocate SR-79867.

Order made in
C.R.P. (PD) (MD) No.847 of 2014
and
M.P (MD) No.1 of 2014
02.08.2019

CS(21.08.2019) 4P 6C